

SERVED: June 1, 2000

NTSB Order No. EA-4843

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 1st day of June, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15915
v.)	
)	
BROCK M. WEIDNER,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not, as required by Section 821.57(b) of the Board's Rules of Practice,¹ perfected by the filing of a timely appeal brief by May 18, 2000; that is, within 5 days after he filed, on May 13, a notice of appeal from

¹Section 821.57(b), 49 C.F.R. Part 821, provides, in pertinent part, as follows:

§ 821.57 Procedure on appeal.

* * * * *

(b) *Briefs and oral argument.* . . . Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. . . . Appeals may be dismissed by the Board on its own initiative or on motion of a party. . . in cases where a party fails to perfect the notice of appeal by filing a timely brief.

the law judge's May 12 decision.² The motion, to which respondent has filed an answer, will be granted.

In response to the motion to dismiss, respondent asserts, in effect, that he assumed, consistent with his understanding of the practice in some other, unspecified federal proceedings, that he did not need to include Saturdays or Sundays in calculating the time limits for filing a notice of appeal or an appeal brief. However, the Board's rule, without referencing the issue of weekend days, clearly states that the appeal brief must be filed within five days after the notice is filed.³ Moreover, the law judge specifically advised the respondent at the conclusion of the hearing that a brief to perfect any appeal must be filed "within five days after the date on which the Notice of Appeal is filed" (Transcript at p. 451).⁴ Respondent's disregard of this advice in favor of unverified assumptions about the requirements of the Board's rules does not provide legal justification for his late submission of an appeal brief.

Without good cause to excuse a failure to file a timely appeal brief, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). Board precedent has long held that an unfounded error in determining a due date does not constitute good cause. See, e.g., Administrator v. Near, 5 NTSB 994 (1986).

²The law judge affirmed an emergency order of the Administrator that revoked respondent's airman medical certificate. The order alleged that respondent did not meet the medical standards of 14 C.F.R. §§ 67.107(b)(2), 67.207(b)(2), or 67.307(b)(2) of the Federal Aviation Regulations, 14 CFR Part 61, because he had received a verified positive drug test result (THC) during a pre-employment drug screen.

³See also, Rule 821.10, 49 C.F.R. Part 821, which expressly states that "Saturdays, Sundays, and legal holidays for the Board shall be computed in the calculation of time in all emergency cases...". Respondent, an attorney, was furnished a copy of the Board's rules of practice.

⁴Since respondent filed his notice of appeal by facsimile on May 13, his brief was due on May 18, not four days later on May 22.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.⁵

Ronald S. Battocchi
General Counsel

⁵Respondent's request for additional time to file a brief in response to the Administrator's reply brief is dismissed as moot.